STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED September 25, 2008
v	No. 279816 Dickinson Circuit Court
MARK ANTHONY PILETTE, Defendant-Appellant.	LC No. 05-003427-FH

Before: Saad, C.J., and Sawyer and Beckering, JJ.

PER CURIAM.

Defendant appeals as of right the trial court order revoking his probation and sentencing him to concurrent prison terms of 24 to 48 months for each of his convictions of obstructing a public official performing his or her duties, MCL 750.479(2), and resisting or obstructing a police officer, MCL 750.81d(1). We affirm.

I. Basic Facts

In August 2005, defendant was convicted of obstructing a public official and resisting or obstructing a police officer.[1] Defendant was sentenced as an habitual offender, third offense, MCL 769.11, to one year in jail with credit for time served and three years of probation. As a condition of his probation, defendant was prohibited from engaging in any "assaultive, abusive, threatening, or intimidating behavior." Defendant was subsequently charged with violating this condition on March 14, 2007.

On March 8, 2007, defendant entered the Iron Mountain Michigan Works service center carrying a Friend of the Court (FOC) letter modifying the amount of his child support payments based on his current employment as reported by Michigan Works. Defendant approached SB, a human resource specialist, and indicated that SB had incorrectly informed the FOC that SB had a meeting with defendant. SB stated that defendant was belligerent, "aggressive," and "walked up

[1] Defendant's conviction for obstructing a public official stems from verbal threats to kill the judge presiding over defendant's ongoing child support obligations. Defendant communicated the threats to kill the judge to both a friend of the court investigator and the police officer assigned to investigate the first threat.

right to [him]," causing him to feel "defensive" because he "didn't know what was gonna happen next." SB then telephoned a supervisor to obtain permission to modify the letter to reflect that SB had a meeting with defendant's employer, not defendant. Although SB tried to calm defendant, defendant spoke in a very loud voice and made threats, such as "[you] better watch [your] ass if [you don't] get all [the] paperwork correct." After SB changed defendant's letter, defendant told him that he had "left something in [his] truck," was going to "go get it," and would "be right back." SB testified that he was "freaked out" by this, concerned that defendant might return with a gun. Although defendant claims that he returned to the office that day offering pay stubs, SB stated that defendant did not return.

On March 14, 2007, defendant returned to Michigan Works demanding that SB again modify an FOC letter to indicate that SB did not have a follow-up meeting with defendant's employer to verify his income, and to alter the reported amount of defendant's work hours and wages. SB would not modify the letter because the changes defendant was demanding were inaccurate and "part of [Michigan Work's] program is to report" the employment status of the participants.[2] SB testified that defendant's demeanor and tone were "[e]ven more severe, more demanding, and I was really scared." Although defendant did not make specific threats, he made "open-ended" threats, including, "[y]ou better do this."

KF, a human resource specialist, observed defendant and SB talking, and indicated that defendant was one to two feet away from SB during the discussion. SB did not raise his voice and tried to calm defendant, but defendant was "very loud" with "anger in his voice" as he continually said, "I need this changed. I'm going to court. We need this corrected before I go." KF explained that during the five to ten-minute episode, defendant's demeanor was "very focused" and "[h]is body was kind of real rigid, walking back and forth," "shaking his arm," and pointing his finger. To KF, this episode was different from any other she had encountered at the center because of defendant's "raised voice, the posture, just kind of the pacing back and forth . . . almost like an animal . . . . He was gonna get this fixed, and he didn't care who was in the job center." As SB was conversing with defendant, SB's supervisor telephoned and KF quietly told him that there was a problem and requested assistance. The supervisor testified that he could hear "loud noises in the background" and "that somebody was shouting or hollering or using elevated tones in their voice." After briefly speaking with SB, the supervisor spoke with defendant. He advised defendant that SB was not authorized to change the letter and that he would not be "bullied" into changing the letter to include false statements. The supervisor was concerned because of how KF and SB sounded on the telephone and because defendant was upset. Defendant had an elevated voice and continuously talked. Both SB and KF testified that as defendant talked to the supervisor on the telephone, his voice was very loud and his tone and demeanor were aggressive and angry. KF felt threatened by defendant's behavior and contemplated telephoning the police because defendant "was very angry" and his behavior got worse while he was on the telephone. SB testified that he was afraid of how defendant might react because he could not change the FOC letter. Defendant ultimately left the center after talking to the supervisor.

[2] At the probation violation hearing, it was determined that defendant's work hours were correctly reported.

A job seeker, who did not know defendant and had no connection to Michigan Works, observed defendant's actions on March 14, 2007. He indicated that as defendant spoke with "a couple of the Michigan Works' employees," he was "quite belligerent," "disruptive," "[y]elling very loud," "[v]ery[,] very high," "had some letter in his hand," and was "shaking the hand." He noted that a lady left the center during the episode. As defendant yelled for approximately ten minutes, SB did not raise his voice. The job seeker did not feel threatened, but opined that "the manner directed to . . . the employees at Michigan Works was a little out of control." He further opined that defendant's behavior was threatening when defendant stated, "You better not screw this up. It took me 16 months to get the job."

Defendant testified that SB wrote a letter on March 8, 2007, that misstated his work hours. On March 14, 2007, defendant told SB that the letter was inaccurate. Defendant admitted that he was disappointed and loud, but explained that he has a very loud voice. He denied acting in a manner that could be construed as assaultive, abusive, threatening or intimidating.

II. Sufficiency of the Evidence

Defendant argues that the trial court erred in finding that he violated the condition of his probation requiring him to refrain from engaging in any "assaultive, abusive, threatening, or intimidating behavior." Defendant contends that, at most, the evidence showed that he was only "angry or upset" and "engage[ed] in a loud conversation." We disagree.

"[E]vidence is sufficient to sustain a conviction of probation violation if, viewed in the light most favorable to the prosecution, it would enable a rational trier of fact to conclude that the essential elements of the charge were proven by a preponderance of the evidence." *People v Ison*, 132 Mich App 61, 66; 346 NW2d 894 (1984).

Viewed in the light most favorable to the prosecution, a rational trier of fact could find by a preponderance of the evidence that defendant engaged in behavior that was assaultive, abusive, threatening, or intimidating. The evidence indicated that defendant confronted SB and demanded that he alter an FOC letter to his satisfaction. Although SB did not raise his voice during the ten-minute encounter, defendant angrily yelled very loudly, was belligerent, shook his arm, and pointed his finger as he shook the FOC letter and continuously demanded that it be changed. Defendant made "open-ended" threats, including, "[y]ou better do this." Based on defendant's actions, both SB and KF were fearful. In addition, an independent witness testified that defendant was very belligerent, threatening, and "a little out of control" toward SB and KF and, although the witness did not feel threatened himself, defendant's behavior toward the employees was threatening and also caused another person to leave the center. From this evidence, the trier of fact could reasonably conclude that defendant violated his probation by engaging in assaultive, abusive, threatening, or intimidating behavior. Although defendant argues that the evidence was deficient, the trial court, as the trier of fact, was entitled to accept or reject any of the evidence presented. See *People v Perry*, 460 Mich 55, 63; 594 NW2d 477 (1999). The trial court did not err in finding by a preponderance of the evidence that defendant violated the terms of his probation.

III. MCR 2.613(B)

Defendant argues that his probation violation conviction must be reversed because he was entitled to have the judge who imposed probation sit as the trier of fact at the probation violation hearing pursuant to MCR 2.613(B) and *People v Manser*, 172 Mich App 485; 432 NW2d 348 (1988). We disagree.

"This Court has held that a judge who sentences a defendant to probation retains jurisdiction over the case in all subsequent proceedings, including revocation of probation. 'The underlying policy is simply to insure that revocation will be considered by the judge who is most acquainted with the matter.'" *Manser*, *supra* at 487 (citation omitted). MCR 2.613(B) provides:

> A judgment or order may be set aside or vacated, and a proceeding under a judgment or order may be stayed, only by the judge who entered the judgment or order, unless that judge is absent or unable to act. If the judge who entered the judgment or order is absent or unable to act, an order vacating or setting aside the judgment or order or staying proceedings under the judgment or order may be entered by a judge otherwise empowered to rule in the matter.

Defendant relies on *Manser*, *supra*, in which this Court reversed the defendant's conviction of probation violation because "there was *no* showing that [the sentencing judge] was absent or unable to act as required by MCR 2.613(B)." *Manser*, *supra* at 487 (emphasis added). In this case, however, the trial court noted for the record that the sentencing judge was not the elected judge for Dickinson County and, when probation was originally imposed, the judge was serving in the county by assignment from the State Court Administrator's Office. At the time of defendant's probation violation hearing, the sentencing judge's assignment had expired and the court had been advised that he had refused a new assignment. To make a complete record, the trial court took testimony from defendant's probation officer, who indicated that as a result of the probation violation charge, he had spoken to the sentencing judge on March 21, 2007. At that time, the sentencing judge told the probation officer that he "would be unavailable for at least a month" and "cited possibly mid May."

As the trial court ruled, the sentencing judge's absence or unavailability was adequately established. Defendant has not offered any support for his claim that the specific reason why the sentencing judge was not available until mid-May had to be disclosed before proceeding. As the appellant, defendant is required to do more than merely announce his position and leave it to this Court to discover and rationalize the basis for his claims. See *Goolsby v Detroit*, 419 Mich 651, 655 n 1; 358 NW2d 856 (1984). In sum, there was an adequate showing that the sentencing judge was absent or unable to act.

Affirmed.

/s/ Henry William Saad
/s/ David H. Sawyer
/s/ Jane M. Beckering